

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NIRMAL SINGH,

Plaintiff,

v.

MARILYN P. WILES<sup>1</sup>, et al.,

Defendants.

CASE NO. C07-1151RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the court on the parties' cross-motions for summary judgment. Dkt. ## 66, 67. Defendants requested oral argument; plaintiff did not. As the court's review is limited to the administrative record, the court finds oral argument unnecessary. For the reasons stated below, the court GRANTS Plaintiff's motion, DENIES Defendant's motion, and remands this action to United States Citizenship and Immigration Services ("USCIS") for a new adjudication of Plaintiff's application for adjustment of status. The court DISMISSES this action, and the clerk shall enter judgment for Plaintiff.

---

<sup>1</sup> The court directs the clerk to substitute Marilyn Wiles, director of the Nebraska Service Center of United States Citizenship and Immigration Services, for Gerald Heinauer, her predecessor. Fed. R. Civ. P. 25(d).

## II. BACKGROUND

After much administrative wrangling, this dispute now turns on an understanding of the Sikh fundamentalist movement in northwest India from the 1970s to the 1990s and whether Damdami Taksal, a Sikh religious institution, can be branded a “terrorist organization” within the meaning of Section 212 of the Immigration and Nationality Act (“INA”). 8 U.S.C. § 1182(a)(3)(B)(vi).

Plaintiff Nirmal Singh is a native of India and a Sikh holy man who has resided lawfully in the United States since at least 1999, when USCIS’s predecessor granted him asylum. In February 2001, he filed an application to adjust his immigration status to “lawful permanent resident.” More than eight years passed between Mr. Singh’s application and the USCIS’s final disposition of his application. The eight-year delay has been the subject of this court’s prior orders, and the court declines to repeat that discussion here. To summarize, USCIS initially delayed adjudication of Mr. Singh’s application because of a quota limiting the number of asylees who could adjust their status, delayed it after the quota for other reasons, then denied it, then vacated the denial while the Department of Homeland Security (“DHS”) considered policy changes that might benefit Mr. Singh, then denied it again when DHS declined to adopt such changes.

The pending motions concern USCIS’s most recent denial of Mr. Singh’s application, memorialized in an October 2, 2009 letter (“Denial Letter”). Dkt. # 53. USCIS declared Mr. Singh ineligible for adjustment of status because he had provided aid to a terrorist organization while he resided in India. Denial Ltr. at 3. Specifically, the Denial Letter cited Mr. Singh’s admission that “in 1984 [he] had allowed members of Damdami Taksal to spend the night at [his] temple and that sometimes [members of Damdami Taksal] came there to hide from police.” Denial Ltr. at 2. A portion of the Denial Letter reviews various public reports and articles that USCIS contends support its conclusion that Damdami Taksal was a terrorist organization when Mr. Singh aided its members.

1 Mr. Singh was aware that USCIS took the position that Damdami Taksal was a  
2 terrorist organization. It had stated as much in an October 25, 2007 letter notifying him  
3 of its intent to deny his application. Administrative Record (“AR”)<sup>2</sup> (Dkt. # 32) at 22-24.  
4 In response to that letter, Mr. Singh submitted a statement from Dr. Cynthia Mahmood,  
5 an anthropology professor from the University of Notre Dame. AR (Dkt. # 32) at 60-65.  
6 Dr. Mahmood has conducted research and written extensively about Sikhism, Sikh  
7 culture, and militant or fundamentalist Sikh movements.

8 Dr. Mahmood explains that Damdami Taksal is a Sikh educational institution,  
9 something akin to a seminary, although Sikhism has no priesthood. At any given time,  
10 some number of Sikhs are in study at Damdami Taksal.

11 In the late 1970s, Jarnail Singh Bhindranwale became the leader of Damdami  
12 Taksal. He is widely associated with the “Khalistan” movement, which sought to  
13 establish an independent Sikh republic. As the movement grew, clashes between Sikhs  
14 and the Indian government led to the death of some Sikhs. In April 1984, Bhindranwale  
15 came to Mr. Singh’s village to baptize 200 Sikh boys. At that time, one of Mr. Singh’s  
16 assistants collected money from villagers to give the Bhindranwale and his supporters to  
17 help the families of Sikhs who had been killed. The record suggests that Mr. Singh was  
18 aware that Bhindranwale and his supporters purchased arms, but that he was told that the  
19 money his assistant collected would be used solely to support families in need.

20 Not long after his visit to Mr. Singh’s village, Bhindranwale and a group of armed  
21 supporters installed themselves in the Golden Temple in Amritsar, the holiest shrine of  
22 the Sikh religion. Indian military forces clashed with him and his supporters. In thirty-  
23 six hours of fighting, hundreds of Sikhs and a smaller number of soldiers were killed.

---

24 <sup>2</sup> The administrative record in this case is fragmented, as USCIS submitted it piecemeal as the  
25 adjudication of Mr. Singh’s application evolved over the past three years. When citing a portion  
26 of the record, the court will note the docket number at which that portion appears. In addition,  
27 the court notes that the last fragment of the administrative record (Dkt. # 68) is numbered in  
28 reverse order. Accordingly, when the court cites multiple pages from that portion of the record,  
the citation will be in reverse order as well.

1 Bhindranwale was among the dead. There were many episodes of violence in Punjab in  
2 the wake of the Golden Temple incident. Mr. Singh led a group of Sikhs from his village  
3 to Amritsar, but Indian authorities arrested Mr. Singh en route. The police held him until  
4 October 16, 1984. When he returned to his village and resumed preaching, he allowed  
5 unarmed Damdami Taksal members to sleep in his temple. Some of them admitted that  
6 they were hiding from the police. Between 1984 and 1996, Indian authorities often  
7 searched Mr. Singh's temple. They never arrested anyone at the temple until 1996, when  
8 they arrested Mr. Singh and his assistant. After bribing his way out of jail, Mr. Singh  
9 fled to the United States in 1997. He successfully sought asylum on the basis of religious  
10 persecution.

11 There is little controversy about the facts that the court cited above. They are  
12 culled from the reports on which USCIS has relied, Dr. Mahmood's statement, and  
13 documents from Mr. Singh's asylum application. The court recites them here to provide  
14 context for its later analysis.

15 The Denial Letter gave only one reason for rejecting Mr. Singh's application for  
16 adjustment of status: Mr. Singh gave aid to a terrorist organization when he allowed  
17 members of Damdami Taksal to sleep in his temple and hide from police. The court's  
18 task is to determine whether that determination can stand.

### 19 III. ANALYSIS

20 Mr. Singh relies on the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 701-  
21 706, as the basis for challenging USCIS's denial of his application. The APA does not  
22 permit plenary review of an agency decision. With certain exceptions not applicable  
23 here, the court can set aside agency action only if it is "arbitrary, capricious, an abuse of  
24 discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This  
25 standard is deferential to the agency. It is not enough that the court would have come to a  
26 different conclusion than the agency. *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d  
27 835, 841 (9th Cir. 2003). Instead, the court reviews the agency's decision to determine if

1 it “considered the relevant factors and articulated a rational connection between the facts  
2 found and the choice made.” *Id.* The court’s review is limited to the administrative  
3 record. *Id.* (“[T]he basis for the agency’s decision must come from the record.”).

4 The parties have chosen to rely on summary judgment motions. On a motion for  
5 summary judgment, the court must draw all inferences from the admissible evidence in  
6 the light most favorable to the non-moving party. *Addisu v. Fred Meyer, Inc.*, 198 F.3d  
7 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate where there is no genuine  
8 issue of material fact and the moving party is entitled to a judgment as a matter of law.  
9 Fed. R. Civ. P. 56(c). The moving party must initially show the absence of a genuine  
10 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The opposing  
11 party must then show a genuine issue of fact for trial. *Matsushita Elect. Indus. Co. v.*  
12 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present  
13 probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident &*  
14 *Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The court defers to neither party in  
15 resolving purely legal questions. *See Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 942  
16 (9th Cir. 1999). Because the court typically makes no finding of fact in determining if an  
17 agency’s decision is arbitrary or capricious, APA disputes are typically amenable to  
18 resolution by summary judgment.

19 In the court’s view, judgment as a matter of law is appropriate because no one  
20 reviewing the administrative record could find a rational relation between the facts the  
21 record reveals and USCIS’s conclusion that Damdami Taksal was a terrorist organization.  
22 An explanation of that conclusion requires the court to begin with the statutory labyrinth  
23 through which the INA excludes aliens who aid terrorist organizations.

#### 24 **A. Overview of Terrorism-Related Grounds for Inadmissibility**

25 Subsection 1182(a) describes numerous grounds for deeming an alien inadmissible  
26 to the United States, including “[s]ecurity and related grounds” for inadmissibility at  
27 § 1182(a)(3). Among other things, § 1182(a)(3) makes inadmissible any alien who “has

engaged in terrorist activity.” § 1182(a)(3)(B)(i)(I). The range of “terrorist activity” is quite broad, and includes the conduct for which USCIS deemed Mr. Singh inadmissible: “commit[ing] an act that the actor knows, or reasonably should know, affords material support” to a terrorist organization. § 1182(a)(3)(B)(iv) & § 1182(a)(3)(B)(iv)(VI). “Terrorist organization[s]” fall into two categories: those officially designated as terrorist organizations (§ 1182(a)(3)(B)(vi)(I)-(II)) and undesignated terrorist organizations (§ 1182(a)(3)(B)(vi)(III)). When USCIS denied Mr. Singh’s application, it concluded that Damdami Taksal was an “undesignated terrorist organization” to whom Mr. Singh provided “material support in 1984.” Denial Ltr. at 3.

Mr. Singh admits that he provided a place to sleep for Damdami Taksal members, and there is no dispute that this qualifies as “material support” within the meaning of § 1182(a)(3)(B)(iv)(VI). It is important to note, however, that permitting Damdami Taksal members to sleep in his temple is the sole type of “material support” to which USCIS pointed. The record reflects that persons associated with Mr. Singh collected money for either Bhindranwale or his supporters early in 1984. AR (Dkt. # 32) at 25, 34. USCIS has never contended that this constitutes providing material support to a terrorist organization, and there is no evidence that the supporters with Bhindranwale at the time of the donation were members of Damdami Taksal.<sup>3</sup>

The critical question, therefore, is whether the record supports USCIS’s determination that Damdami Taksal was an undesignated terrorist organization. An undesignated terrorist organization is a “group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).” § 1182(a)(3)(B)(vi)(III). The

---

<sup>3</sup> Although Mr. Singh has not pressed the issue, the court notes that awareness that Bhindranwale and his supporters purchased arms is not the same as awareness that Damdami Taksal members purchased arms or otherwise engaged in terrorist activity. Material support to an undesignated terrorist organization is a ground for inadmissibility, but an alien has a defense if he can show by “clear and convincing evidence that the actor did not know, and should not have known, that the organization was a terrorist organization.” § 1182(a)(3)(B)(iv)(VI)(dd).

activities described in the designated subclauses are exceedingly broad in scope. They include committing or inciting terrorist activity, preparing or planning terrorist activity, gathering information on targets for terrorism, soliciting funds for terrorist activities or terrorist organizations, soliciting people to engage in terrorism or join a terrorist organization, and providing material support for terrorist activity, terrorists, or terrorist organizations. § 1182(a)(3)(B)(iv)(I)-(VI). The statute also defines “terrorist activity” broadly, to include not only traditional acts of terrorism, but any use of a weapon or other dangerous instrument with the intent to endanger people or property.

§ 1182(a)(3)(B)(iii)(I)-(VI). As other courts have observed, it appears that “Congress intentionally drafted the terrorist bars to relief very broadly . . . .” *In re S.K.*, 23 I. & N. Dec. 936, 941 (B.I.A. 2006); *Khan v. Holder*, 584 F.3d 773, 777 (9th Cir. 2009).

## **B. Review of the Administrative Record**

The court now reviews the administrative record, beginning with the sources on which USCIS relied and then turning to the sources that Mr. Singh submitted.

### **1. Sources That USCIS Placed in the Administrative Record**

The Denial Letter relies on snippets of publicly available reports. Several were from Canadian sources collected at the website for the United Nations High Commission for Refugees (“UNHCR”). USCIS also relied on another report from Denmark’s immigration service, an article from the website at [www.satp.org](http://www.satp.org) (the South Asian Terrorism Portal), and a Time Magazine article. USCIS contends that these sources support its view that Damdami Taksal was a terrorist organization.

USCIS first cited two reports from the Immigration and Refugee Board of Canada that described Damdami Taksal during the early to mid-1980s as a “militant Sikh religious seminary group.” Denial Ltr. at 2 (citing AR (Dkt. # 68) at 76). Although one of the reports uses that characterization, the use of the term “militant” without more is no basis for concluding that Damdami Taksal was a terrorist organization.



1           The first report, which is three paragraphs long, states that in 1988 Damdami  
2       Taksal leaders “expressed their concern over renewed killings.” AR (Dkt. # 68) at 78. It  
3       does not state or imply that Damdami Taksal members were responsible for the killings.  
4       Similarly, a statement that a January 1990 “assassination of a AISSF leader was  
5       apparently linked to power struggle with the Damdami Taksal,” does not give any basis  
6       for determining that Damdami Taksal was responsible for the assassination. *Id.* Indeed,  
7       the only statement the first report makes about the actions of Damdami Taksal is that in  
8       1988 it “served as a mediator between Sikh gunmen in Amritsar and the government.”  
9       *Id.* The second report scarcely mentions Damdami Taksal, stating only that its members  
10      “formed an advisory panel to look after the religious and political affairs of the Sikhs.”  
11      AR (Dkt. # 68) at 76 (internal quotation omitted).

12           The Denial Letter next cites a report from the Danish Immigration Service for the  
13      proposition that Bhindranwale was a “charismatic Sikh religious leader, who preached  
14      fervent fundamentalism and the armed fight for national freedom.” Denial Ltr. at 2. The  
15      report states that Bhindranwale and “armed supporters” occupied the Golden Temple in  
16      Amritsar in 1984, leading to the “attack” by the Indian military that killed Bhindranwale  
17      and “hundreds of his supporters.” AR (Dkt. # 68) at 68-67. The description of the  
18      conflict makes no mention of Damdami Taksal. Only later in the report is Damdami  
19      Taksal named as a “religious group which trained Sikh priests” that “militant Sikh leader  
20      Bhindranwale” once led. *Id.* at 56. The report noted that some militant Sikh groups  
21      recruited from Damdami Taksal. *Id.* The report does not suggest that Damdami Taksal  
22      was involved in violence. Indeed, the report names dozens of militant Sikh groups that  
23      operated in India from the 1970s through 2000, never suggesting that Damdami Taksal  
24      was one of them. The report does, however, explain why Damdami Taksal members  
25      might have hid in Mr. Singh’s temple. Following the assassination of Prime Minister  
26      Indira Ghandi in October 1984, “a massacre of Sikhs in and around Delhi began which  
27      left thousands dead and thousands more injured and homeless . . . .” *Id.* at 67. The report



1 describes the “police’s abuse of power, serious human rights violations, arbitrary  
2 execution of suspects and the disappearance of young Sikh men” in the period from 1984  
3 to 1992. *Id.* at 67. The report also describes police monitoring of Sikh temples. *Id.* at 33  
4 (relating claim by source that “since 1992 those administering Sikh temples had been  
5 obliged to provide the police with a list of guests staying there overnight”).

6 The Denial Letter also relies on an assessment from the South Asian Terrorism  
7 Portal for a description of a 1978 incident in which “[s]ixteen followers of the Damdami  
8 Taksal and the Akhand Kirtani Jatha were killed.” Denial Ltr. at 2; AR (Dkt. # 68) at 19.  
9 Nothing in the assessment suggests that any members of Damdami Taksal acted violently  
10 or were armed. The assessment viewed the incident as the “beginning of terrorist  
11 violence in Punjab,” and described Bhindranwale’s installation in the Golden Temple in  
12 1984. AR (Dkt. # 68) at 19. The “parallel administration” he set up within the temple  
13 stored weapons, issued *diktats*, threatened police and others, and tortured and killed  
14 people inside the temple. *Id.* The report does not suggest, however, that Damdami  
15 Taksal members were installed with Bhindranwale in the temple. Like the Danish report,  
16 the assessment describes a terrorist movement and government counter-movement in the  
17 years following Bhindranwale’s death at the temple. *Id.* at 19-18. The assessment  
18 includes a list of terrorist groups operating in the region, a list that does not include  
19 Damdami Taksal. *Id.* at 18.

20 The Denial Letter’s next citation is to another report from the Immigration and  
21 Refugee Board of Canada available on the UNHCR website. Denial Ltr. at 2. The report  
22 explains that in “January 1986, a group of 20,000 Sikh members of the Damdami Taksal  
23 and the AISSF entered the Golden Temple in Amritsar, took control . . . , and announced  
24 the establishment of an advisory panel to look after the religious and political affairs of  
25 the Sikhs.” AR (Dkt. # 68) at 7. There is no indication that anyone used violence in  
26 taking control of the temple. In April, the “150 member advisory panel declared a  
27 separate Sikh state of Khalistan.” *Id.* That declaration led to an escalation of

1 “[s]ecessionist-related violence,” but there is no suggestion that the advisory panel  
2 advocated violence.

3 Finally, the Denial Letter points to a Time Magazine article published just after the  
4 June 1984 raid on the Golden Temple in which Bhindranwale and others were killed.  
5 Denial Ltr. at 3. The article notes that Bhindranwale had “provoked the violence,” and  
6 had stated in advance of the raid that “We will give them battle. If die we must, then we  
7 will take many of them with us.” AR (Dkt. # 68) at 4. Bhindranwale and his supporters  
8 resisted the raiders with rockets and machine guns. *Id.* at 3. Like other accounts in the  
9 record, the article describes the death of many Sikhs in the raid, and the violence  
10 throughout Punjab after the raid. The article does not mention Damdami Taksal.

## 11 **2. Sources That Mr. Singh Placed in the Administrative Record**

12 The Denial Letter makes no mention of the material Mr. Singh submitted in  
13 response to USCIS’s notice of its intent to deny his application. Nonetheless, the court  
14 must consider the complete record when determining whether it supports the conclusions  
15 USCIS reached.

16 Mr. Singh’s primary contribution to the record was Dr. Mahmood’s statement.<sup>4</sup>  
17 She provides brief background on Sikhism and Damdami Taksal, including the  
18 explanation that Damdami Taksal is “not an organization at all, but an institution, one of  
19 the most venerable educational institutions in Sikhism.” AR (Dkt. # 32) at 63. She then  
20 considers the sources USCIS cited in its notice of intent to deny, which differ somewhat  
21 from the sources it later cited in the Denial Letter. She describes the 1978 murder of  
22 Damdami Taksal members, and explains what USCIS’s sources do not address:

---

23 <sup>4</sup> The copy of Dr. Mahmood’s statement in the Administrative Record is unsigned. Mr. Singh  
24 has provided un rebutted evidence that he submitted a signed statement in advance of USCIS’s  
25 adjudication. Dkt. # 71, Ex. 1. USCIS suggests both that Dr. Mahmood’s statement “does not  
26 deserve the weight of a sworn affidavit” (Dkt. # 70 at 19 n.17) and that it “focus[ed] on the  
27 substance of Dr. Mahmood’s statement rather than the fact that the document contained in the  
28 record was unsigned.” Dkt. # 73 at 8 n.7. The court finds that Mr. Singh submitted a signed  
statement from Dr. Mahmood, and that even if he had not, the lack of a signature is no basis to  
afford the document less weight.

1 Damdami Taksal members had assembled peacefully, and were murdered by another  
2 group. *Id.* at 63-64 (“This is a case of someone using a source without full awareness of  
3 its credibility, and not checking the further historical context.”). She questions USCIS’s  
4 efforts to paint Bhindranwale as a terrorist, but she does not deny that he and his  
5 supporters were armed and engaged in violence. *Id.* at 64. Finally, she addresses  
6 Damdami Taksal’s role in taking control of the Golden Temple in 1986. She explains  
7 that most of the 20,000 Sikhs involved were members of the AISSF, a much larger  
8 organization. *Id.* at 65. She contends that AISSF did not advocate violence, although  
9 many Sikh groups operating in the region did. *Id.*

10 Mr. Singh also submitted a 1999 report from the British Home Office. The report  
11 states that Bhindranwale “preached strict fundamentalism and an armed struggle for  
12 national liberation.” AR (Dkt. # 32) at 105. He and his unnamed followers “established  
13 a terrorist stronghold” at the Golden Temple in 1984. Damdami Taksal is nowhere  
14 mentioned in the discussion of Bhindranwale and his violent activity. The report lists  
15 seven “major” Sikh militant groups, and Damdami Taksal is not among them. *Id.* at 107.  
16 The only discussion of Damdami Taksal comes in the report’s appendix of “other  
17 organizations.” *Id.* at 132-33. It describes the group as “one of the most distinguished  
18 Sikh seminaries in India.” *Id.* at 133. It is the only source in the record to make a direct  
19 statement regarding Damdami Taksal and violence:

20 As far as can be established, Dam Dami Taksal has never itself advocated  
21 an armed struggle for an independent Sikh state. It has almost certainly  
22 never had any direct link with terrorist organizations, though its orthodox  
23 teaching may have inspired those who took up the gun. Nowadays [as of  
24 1999] it is a purely religious institution.

25 *Id.* at 133.

26 Mr. Singh also submitted a journal article examining Sikh fundamentalism. It  
27 advocated the need to “distinguish members of Damdami Taksal from the much broader  
28 group of those who were fighting for Khalistan.” AR (Dkt. # 32) at 159.

**C. The Record Does Not Support the Conclusion that Damdami Taksal Was a Terrorist Organization.**

From this record, the court now considers USCIS's conclusion that Damdami Taksal was an undesignated terrorist organization. That conclusion is correct if Damdami Taksal was, at the relevant time, a "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv)." § 1182(a)(3)(B)(vi)(III).

So far as the record reveals, Mr. Singh did not provide support to Damdami Taksal until at least October 1984. By then, Bhindranwale, the sole member of Damdami Taksal who the record identifies as having committed terrorist acts, was dead. USCIS appears to reason that Bhindranwale engaged in terrorist activity, and thus the Damdami Taksal organization that he led is a terrorist organization. The record is devoid, however, of any indication that any Damdami Taksal member except Bhindranwale engaged in terrorist activities.<sup>5</sup> USCIS's arguments to the contrary are not persuasive. Its contention, for example, that the murder of Damdami Taksal members in 1978 somehow shows that those members were engaging in terrorist activity is unsupportable. There is no evidence that the murder victims were armed or otherwise engaging in terrorist activity. USCIS has documented that Bhindranwale and unidentified "supporters" engaged in terrorist activity at times from 1978 to 1984. What it has not shown is that Bhindranwale's terrorist supporters were members of Damdami Taksal.<sup>6</sup>

The record reflects that members of Damdami Taksal and others took control of the Golden Temple in 1986. This is one of the few instances in the record that describe

---

<sup>5</sup> Mr. Singh questions whether the activities of a group's leader can be attributed to the group. That question is an important one, and one to which USCIS has devoted little analysis. The court need not answer the question in this case, because at a minimum, USCIS needs evidence of one more member of the group engaging in terrorist activity. USCIS lacks that evidence.

<sup>6</sup> In its briefing before the court, USCIS repeatedly quotes statements in the record that make no reference to Damdami Taksal at all, while asserting without explanation that the statements are about Damdami Taksal. *See, e.g.*, Dkt. # 66 at 17.

1 activity by Damdami Taksal, rather than Bhindranwale and unnamed “supporters.”  
2 There is no evidence in the record, however, that Damdami Taksal members (or anyone  
3 else) took the temple by violence or by threats of violence or by any other means that  
4 would make their actions terrorism within the meaning of the INA. While they  
5 advocated for Khalistan, there is no evidence that they advocated violence.

6 In the Denial Letter, USCIS did not explain precisely how Damdami Taksal’s  
7 activities were terrorist activity. An examination of the statutory definition of “[e]ngage  
8 in terrorist activity” yields no better answer. Most acts that constitute “[e]ngag[ing] in  
9 terrorist activity” depend on separately-defined “terrorist activity.” The record does not  
10 permit the rational conclusion that Damdami Taksal members committed acts that the  
11 INA defines as “terrorist activity.” They did not hijack a vehicle, seize or detain people  
12 to compel government action, attack an “internationally protected person,” or assassinate  
13 someone. § 1182(a)(3)(B)(iii)(I)-(IV). There is no evidence that Damdami Taksal  
14 members other than Bhindranwale carried weapons, much less that they used them “with  
15 intent to endanger . . . the safety of one or more individuals or to cause substantial  
16 damage.” § 1182(a)(3)(B)(iii)(V). There is also no evidence that they threatened,  
17 attempted, or conspired to commit any of these terrorist activities.  
18 § 1182(a)(3)(B)(iii)(VI).

19 The record also provides no support for the conclusion that Damdami Taksal  
20 members other than Bhindranwale “[e]ngage[d] in terrorist activity,” which is a different  
21 set of acts than those that constitute “terrorist activity.” There is no evidence that  
22 members of Damdami Taksal committed or incited a terrorist activity,<sup>7</sup> prepared or  
23 planned a terrorist activity, or gathered information on potential targets of terrorist  
24 activity. § 1182(a)(3)(B)(iv)(I)-(III). There is no evidence that members solicited

---

25  
26 <sup>7</sup> USCIS often points to vague statements in the record about Bhindranwale’s violent rhetoric and  
27 vague statements that violence occurred, and then assumes that the violence occurred because of  
28 Bhindranwale’s rhetoric. Nothing in the record that shows that anyone’s rhetoric incited  
violence.

1 anyone to join a terrorist organization or engage in terrorist activities.  
2 § 1182(a)(3)(B)(iv)(V). There is evidence that Mr. Singh's assistant raised money to  
3 give to Bhindranwale and his associates when they came to his village, but USCIS has  
4 not relied on this as a basis for claiming that Damdami Taksal members engaged in  
5 terrorist activity.<sup>8</sup> § 1182(a)(3)(B)(iv)(IV). Finally, while the record is clear that Mr.  
6 Singh provided support for Damdami Taksal members, there is no indication that  
7 Damdami Taksal members provided material support for the commission of a terrorist  
8 activity. § 1182(a)(3)(B)(iv)(VI).

9 The court's review of the administrative record and the relevant statutory  
10 framework leaves it convinced that there is no rational connection between the facts  
11 disclosed in the record and USCIS's determination that Damdami Taksal was a terrorist  
12 organization while Mr. Singh permitted its members to sleep at his temple. The record  
13 reflects a complex struggle between Sikhs and the Indian government from the 1970s  
14 through the 1990s. Many groups advanced Sikh interests in that struggle, using means  
15 that ranged from unquestionably peaceful to plainly violent. Damdami Taksal played  
16 some role in that struggle, as the record reflects. The record on which USCIS relied does  
17 not reflect what that role was, and it provides no basis for the conclusion that the role  
18 encompassed conduct that would support its designation as a terrorist organization.

19 **D. Additional Concerns About the Administrative Record**

20 In the previous section, the court explained there is no rational connection between  
21 the administrative record and USCIS's decision to designate Damdami Taksal as a  
22 terrorist organization. That conclusion, by itself, means that the court must vacate the  
23 denial of Mr. Singh's application and remand this action to USCIS. The court has other

---

24 <sup>8</sup> When Mr. Singh was questioned about the donation to Bhindranwale, he explained that he  
25 believed that the money would go to the families of murdered Sikhs, and not to buy weapons.  
26 USCIS relies on this as evidence that Mr. Singh knew that Bhindranwale and his supporters  
27 bought weapons, a proposition that Mr. Singh does not dispute. USCIS seems to assume that  
28 Mr. Singh has admitted that the donation went to Damdami Taksal, an assumption that the record  
does not support.

1 concerns about the administrative record, however, that further undermine USCIS's  
2 conclusions.

3 First, USCIS's decision to include only a few sources in the administrative record  
4 raises concerns about its deliberative process. This court is not empowered to act as a  
5 fact finder in this case. But, if it were, and if it were inclined to find facts simply by  
6 searching the internet for resources describing Damdami Taksal, it would be possible to  
7 construct a record that is much more favorable to Mr. Singh's assertion that the group is  
8 not a terrorist organization. Indeed, the court could do so merely by disregarding  
9 USCIS's sources and focusing on Dr. Mahmood's statement and the report of the British  
10 Home Office.<sup>9</sup> That is no way to build a record, of course. It appears, however, that the  
11 USCIS used essentially this approach in relying exclusively on its sources without so  
12 much as mentioning the materials Mr. Singh submitted. On remand, the USCIS would be  
13 well served to better document what sources it considered, and explain, if appropriate,  
14 why it declined to rely on other sources.

15 Second, USCIS's failure to address Dr. Mahmood's declaration raises further  
16 doubts about its deliberative process. So far as the record reflects, Dr. Mahmood is the  
17 sole person with relevant expertise who considered both Mr. Singh's conduct and  
18 Damdami Taksal with an eye toward exploring whether Damdami Taksal was engaged in  
19 terrorism. She is not an attorney, and the court does not defer to her legal conclusions.  
20 Her factual conclusions, however, have heightened persuasiveness where the record does  
21 not contradict them, and no one disputes her expertise.

22 Third, the court has referred to statements from the sources included in the  
23 administrative records as "facts" and "evidence." The court uses those terms loosely.

---

24 <sup>9</sup> USCIS notes that Mr. Singh bears the burden of proving he is eligible for adjustment. *See* 8  
25 C.F.R. § 103.2(b)(1) ("An applicant or petitioner must establish that he or she is eligible for the  
26 requested benefit at the time of filing the application or petition."). Mr. Singh satisfied his  
27 burden in this case, submitting evidence from which an adjudicator could conclude that  
28 Damdami Taksal was not a terrorist organization. His burden of proof ultimately makes no  
difference in this case, because even relying solely on the sources USCIS cited, there is no  
rational connection between those sources and USCIS's conclusions.



1 Some of the information about the Sikh separatist movements is non-controversial, and  
2 likely an appropriate subject for administrative notice. *See Castillo-Villagra v. I.N.S.*,  
3 972 F.2d 1017, 1026-27 (9th Cir. 1992) (reviewing administrative notice doctrine).  
4 Much of the information critical to USCIS's adjudication of Mr. Singh's application,  
5 however, is not an appropriate subject for administrative notice. *Id.* at 1027 ("[T]he  
6 administrative desirability of notice as a substitute for evidence cannot be allowed to  
7 outweigh fairness to individual litigants."). In *Castillo-Villagra*, USCIS's predecessor  
8 was similarly called upon to draw conclusions about a controversial political situation in  
9 another country. *Id.* at 1026-27. That court provides an excellent discussion of the line  
10 between facts subject to administrative notice and controversies that cannot be dispensed  
11 with so easily. Too often in this case, the USCIS has turned controversial assertions from  
12 documents whose reliability is unknown into "facts," and then made assumptions from  
13 those facts that were fatal to Mr. Singh's application. *Id.* at 1029 ("[T]he agency should  
14 not have assumed away petitioners' case.").

15 **E. The Record Does Not Permit The Court to Determine Whether USCIS Has**  
16 **Taken Inconsistent Positions on Damdami Taksal's Status as a Terrorist**  
17 **Organization.**

18 Before concluding, the court addresses Mr. Singh's assertion that other Sikhs who  
19 have supported Damdami Taksal have successfully adjusted their immigration status. He  
20 made much of this assertion in a prior motion to compel discovery or supplementation of  
21 the administrative record. He relied on a declaration from a Seattle immigration attorney  
22 who stated that two of his clients had been granted lawful permanent resident status  
23 despite their known support of Damdami Taksal. When the court resolved that motion, it  
24 directed the parties to meet and confer regarding discovery on this issue among other  
25 things. Dkt. # 62 (Apr. 27, 2010 order). They did so, and Mr. Singh declined to seek  
26 further discovery or supplementation of the record with regard to that issue. Dkt. # 63  
27 (parties' stipulation regarding administrative record). Nonetheless, Mr. Singh raises the

1 issue again in a footnote to his summary judgment motion. Pltf.'s Mot. (Dkt. # 67) at 13  
2 n.8. USCIS offers little response, it merely insists that every case is different. The court  
3 concludes that Mr. Singh's evidence raises troubling questions, but it is not extensive  
4 enough to permit the court to answer them. On the record before the court, it is just as  
5 likely that USCIS treated other immigrants differently because the nature of their  
6 involvement with Damdami Taksal was different, not because it took inconsistent  
7 positions as to Damdami Taksal's status as a terrorist organization.

#### 8 IV. CONCLUSION

9 For the reasons stated above, the court GRANTS Mr. Singh's motion for summary  
10 judgment (Dkt. # 67) and DENIES USCIS's motion (Dkt. # 66). The court vacates  
11 USCIS's October 2009 decision denying Mr. Singh's motion for adjustment of status.  
12 This matter is dismissed, and the court remands this matter to USCIS for a new  
13 adjudication of Mr. Singh's application in accordance with this order. USCIS shall  
14 consider Mr. Singh's application anew. If it adheres to the position that Mr. Singh aided  
15 a terrorist organization, it shall provide him with new notice of its intent to deny his  
16 application.

17 The court DISMISSES this action. The clerk shall enter judgment for Mr. Singh.

18 DATED this 28th day of September, 2010.

19  
20 

21 The Honorable Richard A. Jones  
22 United States District Judge  
23  
24  
25  
26  
27